IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.108 OF 2005

M/s. B. S. E. L. Infrastructure Realty Ltd. ...Petitioner.
Vs.
Navi Mumbai Municipal Corporation & Ors. ...Respondents.
....
Mr. R. D. Soni i/b. Ram & Co. for the Petitioner.
Mr. R. S. Apte for Respondent Nos.1 and 2.
Mr. G. S. Hegde for Respondent No.3.
Mr.Y. D. Mulani, AGP for Respondent Nos.4 and 5.
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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

July 18, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing.

2. The City and Industrial Development Corporation of Maharashtra Limited (CIDCO) which was designated as a New Town Development Authority under Section 113 of the Maharashtra Regional and Town Planning Act, 1966, for the

development of the town of Navi Mumbai, approved by a Board Resolution dated 23rd December 1997, a proposal to develop Sector 30A at Vashi as a modern Infotech Park. CIDCO allotted a plot of land bearing No.39/5 admeasuring 1500.11 sq.mtrs., in Sector 30A at a premium of Rs.1,50,01,100/- with a Floor Space Index of 1.5 to a Company by the name of VMC Software Ltd. A formal agreement of lease was executed on 1st March 2000 by CIDCO in favour of the aforesaid Company.

3. The Government of Maharashtra announced an Information Technology policy in the year 1998 and, in 1999, decided to offer incentives and concessions for setting up information technology establishments. A Resolution was issued on 19th April 2000 by government in exercise of power conferred by Section 37(2) of the Act providing certain modifications to the Development Control Regulations with a view to offer incentives to Information Technology establishments. Amongst the modifications proposed was one that would empower CIDCO to allow 100% additional FSI over and above the FSI values

prevailing as on 1st April 2000 in respect of plots sold exclusively for software development at designated I.T. Parks at an additional lease premium to be decided by CIDCO.

4. On 20th October 2000, VMC Ltd. addressed a communication to CIDCO seeking an enhancement of FSI from 1.5 to 3. By a letter dated 3rd January 2001, CIDCO offered an enhancement of the FSI from 1.5 to 3 on the payment of an additional premium computed at the rate of Rs.2210 per sq.mtr., and amounting in all to Rs.33,15,243/-. Certain other terms and conditions were set out in the aforesaid letter. Clause 16 of the letter inter alia provided that the lessee would be entitled to an FSI of 3. Upon the payment of the additional premium, a supplemental agreement was entered into by CIDCO with VMC Ltd., permitting the utilisation of an additional FSI of 1.5, over and above an equivalent FSI which had already been granted by CIDCO. VMC Ltd. is stated to have transferred its right, title and interest in respect of the aforesaid plot of land in favour of the Petitioner thereto on 18th October 2002. CIDCO granted its approval on 18th

October 2002 subject to certain conditions including the payment of transfer charges of Rs.2 lakhs. It has been stated in the petition that all the conditions that were stipulated were complied with.

5. According to the Petitioner, CIDCO allotted to the Petitioner another plot of land admeasuring, 3775 sq.mtrs. being Plot No.39/5A in Sector 30A at the International Infotech Park, Vashi, subject to the payment of a lease premium of Rs.3,77,50,000/- calculated at the rate of Rs.10,000/- per sq.mtr. The Petitioner is stated to have paid the aforesaid amount on 10th August 1999, 31st August 1999 and on 11th November 1999. Possession of the plot is stated to have been handed over. By a letter dated 20th October 2001, the Petitioner sought an enhancement of the FSI. On 30th October 2001 a letter was issued by CIDCO agreeing to the enhancement to an FSI of 3 subject to the payment of a lease premium of Rs.83,42,750/-. The Petitioner has stated that the aforesaid amount was paid to CIDCO; upon which a supplemental agreement was entered into by CIDCO.

6. A building proposal was submitted by the Petitioner for the development of the aforesaid two plots to the Navi Mumbai Municipal Corporation (the First Respondent). The proposal was rejected on 23rd May 2003 on the ground that an FSI of 1.5 was permissible whereas the Petitioner had applied for an FSI of 3 and that the required charges had not been paid by the Petitioner for building permission. By its letter dated 21st August 2004, the First Respondent justified its refusal by referring to a Government Resolution dated 20th May 2004 issued by the Urban Development Department, in supersession of directives previously given. The relevant clause of the said Government Resolution reads as follows:

> "The Additional FSI shall be granted upon payment of premium which shall be paid in the manner as may be determined by the Government. Such premium shall be recovered at the rate of 25% of the present day market value of the land under reference as indicated in the ready reckoner. 25% of the total premium shall be paid to the Government and the remaining 75% amount shall

be paid to the respective Municipal Council, Municipal Corporation, Special Planning Authority where no such Planning Authority exists, the share of premium shall be paid to the MIDC".

The Petitioner thereupon addressed a letter dated 29th July 2004 to the Principal Secretary in the Urban Development Department recording that the building proposal had been rejected by the First Respondent on the ground of the non-payment of the premium to the First Respondent. The Petitioner stated that since it had already paid a premium of Rs. 1.16 crores to CIDCO, CIDCO should be called upon to refund the same in the event that it was decided that the premium was payable to the First Respondent.

7. CIDCO is stated to have invited offers for allotment of plots 17 and 18 in Sector 30A at Vashi. The Petitioner addressed a letter to CIDCO seeking a clarification as to whether the premium for additional FSI was payable to CIDCO or to the First Respondent herein. CIDCO by its letter dated 8th September

2004 took the position that the additional premium would be payable to it and not to any other organization.

8. It has been stated that the Petitioner submitted plans to the First Respondent on 4th February 2002 which were rejected by the First Respondent on 23rd May 2003 principally on the ground of the non-payment of the requisite charges. By letters dated 5th June 2003 and 3rd October 2003, the plans came to be rejected again. In so far as the grounds for rejection are concerned, the only issue which has been canvassed in these proceedings is in regard to the demand made by the First Respondent for the payment of premium. The First Respondent addressed two communications dated 10th June 2004 and 7th January 2005. Clause 3 of the letter dated 7th January 2005 addressed by the First Respondent is to the effect that in order to enable the Petitioner to an enhanced FSI, 25% of the premium would be liable to be deposited with the State Government while the balance of 75% must be deposited with the First Respondent. It may be noted that in the meantime, a communication dated 8th

December 2004 was addressed to the Petitioner under Section 53 of the Maharashtra Regional and Town Planning Act, 1966, with reference to the additional construction carried out by the Petitioner. The Petitioner has been called upon to either get the additional construction regularised in terms of Section 53(3) or to face prosecution under the provisions of the Act.

9. Affidavits in reply have been filed in these proceedings both by the Navi Mumbai Municipal Corporation and by CIDCO. From these affidavits it is apparent that there is a dispute between the Municipal Corporation on the one hand and CIDCO on the other. The Municipal Corporation in its affidavit has contended that CIDCO has ceased to be a Planning Authority for the area covered by the Municipal Corporation consequent upon an order dated 15th December 1994 of the State Government. According to the Municipal Corporation it had on 9th April 2001 granted development permission to the Petitioner on the basis of an FSI of 1.50 for plot Nos.39/5 and 39/5A. The permission was for a basement, ground floor and four floors. It has been stated that

though the Petitioner applied for revised development permission, on 4th February 2002, 19th April 2003, 27th June 2003 and 13th April 2004, this was rejected by the Municipal Corporation on 16th February 2002, 5th June 2003, 3rd October 2003 and 10th June 2004. According to the Municipal Corporation in terms of the Government Resolution dated 20th May 2004, the entitlement to receive the premium in respect of plots within its jurisdiction would be that of the Municipal Corporation. Hence, in the event that the Petitioner seeks to avail of an enhanced FSI of 3 being an I.T. Industry, it has been prayed that the Petitioner should be directed to pay the premium to the Municipal Corporation.

10. On the other hand, in the affidavit in reply which has been filed by CIDCO, it has been submitted that it was CIDCO which by its Board Resolution dated 23rd December 1997 approved the proposal to develop the land as a modern Infotech Park. It has been stated that Plot No.39/5 was allotted to VMC Software Ltd., against an FSI of 1.5 which was enhanced to 3 in a supplementary agreement dated 18th September 2001 executed against the

payment of additional lease premium. Similarly it has been stated that Plot No.39/5A was allotted to the Petitioner and in respect of the aforesaid plot also additional FSI came to be granted, so as to allow a total FSI of 3 against the payment of additional lease premium. CIDCO has stated in its affidavit that the development of the infrastructure of the I.T. Park is being carried out by it and the GR dated 20th May 2004 empowers it to levy additional premium. According to CIDCO, Sector 30A has not been transferred to the Municipal Corporation and CIDCO being the planning authority for that area, it is entitled to recover additional premium for an enhancement of FSI from 1.5 to 3.0.

11. The facts which have been narrated in the earlier part of this order would reveal that CIDCO has accepted additional lease premium from the Petitioner for allowing an enhanced FSI, the enhancement being from 1.5 to 3.0. CIDCO has admittedly entered into a supplemental agreement with the Petitioner. The Municipal Corporation has disputed the entitlement of CIDCO to do so since according to it, the jurisdiction to demand additional

lease premium vests with the Municipal Corporation and not with CIDCO. This is essentially a dispute between two statutory bodies and having regard to the nature of the issues which arise therein, it is appropriate that this should be resolved by the State Government. We are, therefore, of the view that it would be appropriate to refer the dispute between the Navi Mumbai Municipal Corporation and CIDCO, to the Chief Secretary of the Government of Maharashtra. In the meantime, having regard to the factual background, it would be appropriate to direct that the plans which have been submitted by the Petitioner to the First Respondent for the consumption of additional FSI should be processed without insistence by the Municipal Corporation on compliance with Condition No.3 contained in its letter dated 7th January 2005, namely, the condition imposed in regard to the deposit of premium with the First Respondent. The resolution of this question will abide by the decision of the Chief Secretary in respect of the entitlement of either the Municipal Corporation or CIDCO to receive the additional lease premium for the utilisation of an enhanced FSI.

12. In the circumstances, this petition is disposed of with the following directions :

-(i) The dispute between Navi Mumbai Municipal Corporation (the First Respondent) and City and Industrial Development Corporation of Maharashtra Ltd. (the Third Respondent) with reference to the question as to which of these two bodies would be entitled to demand and receive the premium payable for the utilisation of additional FSI in terms of the GR dated 20th May 2004 is referred to the Chief Secretary to the Government of Maharashtra for resolution. The Chief Secretary shall resolve this dispute after hearing the disputing parties.

-(ii) In the meantime, the plans which have been submitted by the Petitioner for the availment of additional FSI of 1.5 in respect of Plot Nos.39/5 and 39/5A of Sector 30A shall be processed by the First Respondent without insisting upon compliance with condition 3 contained in the letter dated 7th

January 2005 (Exh.T);

-(iii) Until a decision is arrived at by the Chief Secretary to the Government of Maharashtra, the First Respondent shall be restrained from taking any action on the basis of its notice dated 8th December 2004 (Exh.V);

-(iv) The question as to whether the First Respondent or the Third Respondent will be entitled to the additional lease premium shall abide by the decision of the Chief Secretary to the Government of Maharashtra. In the event that it is found by the authority competent to do so, upon the determination of the Chief Secretary, that any additional amount is due and payable by the Petitioner, the Petitioner shall effect payment within a period of two weeks of the demand;

-(vi) The plans which have been submitted by the Petitioner shall be processed in accordance with law, subject to what has been stated hereinabove. No opinion is expressed by this Court on

the question as to whether the plans that have been submitted by the Petitioner meet all the other requirements of the building regulations and bye-laws.

13. The petition is accordingly disposed of in these terms. There shall be no order as to costs.

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